Filed 12/14/09 In re Jared L. CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JARED L., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. THOMAS L. et al., Defendants and Respondents; JARED L., Appellant.	G041920 (Super. Ct. No. DP013961) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Salvador Sarmiento, Judge. Reversed and remanded.

Marsha F. Levine, under appointment by the Court of Appeal, for Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J. Agin for Plaintiff and Respondent.

Robert McLaughlin, under appointment by the Court of Appeal for Defendant and Respondent Thomas L.

Lisa DiGrazia, under appointment by the Court of Appeal for Defendant and Respondent Monica R.

* * *

The juvenile court erred when it ordered additional reunification services. We reverse and remand.

I

FACTS

The minor is five years old. He was brought into protective custody on August 22, 2006 due to allegations of general neglect and abuse of a sibling.

The court's minute order of September 17, 2008 states: "Court adopts recommendation of Social Services Agency per report of 9-17-08." The Orange County Social Services Agency's (SSA) recommendation read: "[I]t is respectfully recommended that the Court find that the Social Services Agency has established by a preponderance of the evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300 of the Welfare and Institutions Code or that such conditions are likely to exist if supervision is withdrawn; further that the Court find that reasonable services have been offered or provided which were designed to aid the parent to overcome the problems which led to initial removal; further, that the child be continued a dependent child of the Juvenile Court and that the child remain in the custody of his father under the supervision of the Social Services Director . . . ."

The next day, September 18, 2008, the father permitted the mother to have an unauthorized visit with the minor. The mother was supposed to have her visits monitored by SSA. SSA's report states: "This led to an explosive physical incident between the parents, which led, according to [the mother], to [the father] grabbing [the minor] by the legs when lying on the bed and pulling him across the bed." The report continues: "The undersigned has concerns about the father's ability to benefit from continued services. The case plan for the father included parenting classes, domestic violence classes, and drug testing. However, even after successfully completing all programs the father has shown that he is not able to control his anger when the mother is involved which is evident from the father's last arrest. The father continues to blame the mother for these altercations and ha[s] not internalize[d] why this behavior is inappropriate. He insists that he was just protecting the child. [¶] . . . [¶] Due to the aforementioned, the undersigned is recommending that No Family Reunification services be offered to the parents and that a 366.26 hearing be scheduled for this matter."

On September 23, 2008, the court ordered detention of the minor at Orangewood, an emergency shelter or any suitable facility pending a hearing. The court further ordered: "SSA to provide reunification services as soon as possible to reunify child with family."

Reunification services were first ordered on August 25, 2006. The father enrolled in an anger management program on December 7, 2006 and completed it on February 20, 2007. He completed a parenting course on March 8, 2007. Drug testing for the father was ordered and administered in 2006 and 2007, with "all negative test results." He completed a domestic violence program. On April 30, 2007, the social worker reported the father participated in all services recommended for him. On January 22, 2008, the juvenile court made a finding that reasonable services had been provided or offered. On October 21, 2008, the social worker reported the father said he does not feel he should do additional services.

On February 26, 2009, the county filed another supplemental petition. That petition alleges the father was arrested after the domestic violence incident on or about September 18, 2008.

On April 6, 2009, at the conclusion of the trial on the amended petition under Welfare and Institutions Code section 387, the court ruled: "The court has no problem of finding that the allegations of the first amended 387 supplemented petition dated February 26, 2009, true by preponderance of the evidence, bringing minor within provisions of section 300. [¶] Court must continue to declare the child a dependent child of the Orange County Juvenile Court. Court finds that conditions still exist which would justify initial assumption of jurisdiction. [¶] Court finds that efforts were made to prevent the need for removal of the child from the child's home. [¶] Minor's four and a half years old; he has been in the system for the past two and a half years. [¶] Father had family maintenance from January of 2008 to September of 2008, when the minor was detained again. [¶] On September the 23rd of 2008, this court held a detention hearing. Father admits to the court that he handled the September incident very badly, and admits to the court that he has an inappropriate relationship with his previous or present spouse. [¶] Prior to this incident, father had received favorable reports from the social worker. [¶] Child has resided with father, or close to his father. For example, he presently resides with the paternal grandparents for most of his life. [¶] Since the last review, father has regularly, consistently, visited the minor at his parents' home. Child is obviously closely bonded to his father and to the grandparents. [¶] At the September 2008 detention hearing, this court ordered the agency to provide services as soon as possible to reunite this minor with his family. [¶] This matter has been continued for numbers of reasons. Almost seven months have elapsed since the removal of the minor in September of 2008. [¶] The agency did not offer father any services until March 17, 2009. Six months after the initial — after the incident of the amended petition. Had services been offered, as ordered by this court in September, father's position at the dispositional hearing may

have been drastically different; we do not know. Services should have been offered to father, they have not. It is only up to the court to stop services, not the social worker. [¶] The court herein finds by clear and convincing evidence that section 361 (a) applies, and to vest custody with the parents would be detrimental to the minor, and to vest custody with the agency is in the child's best interest. Custody must be taken from the parents at this time. Custody to be vested with the agency. [¶] Based on these findings, the court orders that family unification services be offered to the parents."

II

DISCUSSION

Counsel for the minor now claims the court erred in ordering additional services. The father argues that on April 6, 2009, the court had the discretion to order three months additional reunification services for the father, and that the court's April 6, 2009, order should be affirmed.

County counsel filed only a letter brief. In it, county counsel states: "The order for additional services was made after father had undisputedly received 25 months of court-ordered services—including approximately 17 months of reunification services and eight months of family maintenance services—before the minor was again removed . . . . Eight months later at trial, the court ordered more services for father because he had not received them as ordered at the supplemental detention hearing. On appeal, the minor contends that the juvenile court lacked discretion to extend father's services beyond the statutory maximum period. . . . [¶] Consistent with the position taken by SSA before the juvenile court, and after a review of the record, SSA supports the minor's request for reversal. Based on our review, we believe the evidence presented to the court demonstrated that the court lacked discretion to extend father's services beyond the statutory maximum period and a section 366.26 permanency hearing should have been set."

Mother filed only a letter brief as well, stating: "Given this is not an appeal from any orders rendered directly regarding the Mother, and given my inability to communicate with her, I am declining to adopt a position in this appeal on behalf of the Mother."

"A juvenile court's dispositional orders, including those respecting reunification services, are subject to that court's broad discretion. To reverse such an order, a reviewing court must find a clear abuse of discretion. [Citation.]" (*In re N.M.* (2003) 108 Cal.App.4th 845, 852.)

Welfare and Institutions Code section 361.5, subdivision (a) states in pertinent part: "[W]henever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. . . . [¶] (1) Family reunification services, when provided, shall be provided as follows: [¶] . . . [¶] (B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (e) of Section 366.21, unless the child is returned to the home of the parent or guardian. [¶] . . . [¶] (3) . . . court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 within the extended time period, or that reasonable services have not been provided to the parent or

guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1. [¶] . . . Physical custody of the child by the parents or guardians during the applicable time period . . . shall not serve to interrupt the running of the period."

Under some circumstances, reunification services may be provided beyond 18 months. "A court may extend the 18-month maximum for reunification efforts only under very limited circumstances, that is, when: no reunification plan was ever developed for the parent [citation]; the court finds reasonable services were not offered [citation]; or the best interests of the child would be served by a continuance [citation] of an 18-month review hearing [citation]." (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167.)

"When a juvenile court sustains a supplemental petition pursuant to section 387, the case does not return to '"square one"' with regard to reunification efforts. [Citations.]" (*Carolyn R., supra*, 41 Cal.App.4th at p. 166; see also, *In re G.W.* (2009) 173 Cal.App.4th 1428, 1440.) "If a dependent child was returned to the custody of a parent or guardian at the 12-month review or the 18-month review or at an interim review between 12 and 18 months and a 387 petition is sustained and the child removed once again, the court must set a hearing under section 366.26 unless the court finds there is a substantial probability of return within the next 6 months or, if more than 12 months had expired at the time of the prior return, within whatever time remains before the expiration of the maximum 18-month period." (Cal. Rules of Court, rule 5.565(f).)

Here the minor was under the age of three when he was removed from the home in August 2006. The juvenile court had already made a finding that reasonable services had been provided when it ordered more services in September 2008. At that

point, there was no statutory authority available to support the order. Nor did any of the conditions delineated in *Carolyn R., supra*, 41 Cal.App.4th at page 167, which might provide reasons for extending services beyond 18 months or the resumption of services, exist.

Under the circumstances in this record, the juvenile court erred when it ordered that additional reunifications services be provided. At that stage of the case, the only option left for the juvenile court was to proceed to Welfare and Institutions Code section 366.26 selection and implementation hearing as required by California Rules of Court, rule 5.565(f). The failure of the juvenile court to do so was error.

III

DISPOSITION

The order of the juvenile court is reversed. The matter is remanded to the juvenile court for the court to set a hearing under Welfare and Institutions Code section 366.26.

MOORE, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.